

**HIGH COURT OF MADHYA PRADESH BENCH AT**

**GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE ANAND PATHAK**

**&**

**HON'BLE SHRI JUSTICE HIRDESH**

**ON 22<sup>th</sup> NOVEMBER, 2024**

**WRIT PETITION NO.17858/2020**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh through its Principal Secretary, General  
Administration, Vallabh Bhawan Bhopal (M.P.)**

**&**

**WRIT PETITION NO.10286/2020**

**Ramkishor Gupta**

**Vs.**

**State of Madhya Pradesh and Others**

**&**

**WRIT PETITION NO.17982/2020**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

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**State of Madhya Pradesh and Another**

**&**

**WRIT PETITION NO.18071/2020**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Others**

**&**

**WRIT PETITION NO.19544/2020**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Others**

**&**

**WRIT PETITION NO.12424/2021**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh**

**&**

**WRIT PETITION NO.14358/2022**

**Special Police Establishment (Lokayukat) Organization,**

**MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Others**

**&**

**WRIT PETITION NO.14361/2022**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Another**

**&**

**WRIT PETITION NO.12654/2021**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Another**

**&**

**WRIT PETITION NO.19877/2021**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Another**

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&

**WRIT PETITION NO.24871/2021**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Others**

&

**WRIT PETITION NO.20836/2022**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**The State of Madhya Pradesh and Another**

&

**WRIT PETITION NO.25310/2022**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Another**

&

**WRIT PETITION NO. 18237/2022**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,**

**Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Another**

**&**

**WRIT PETITION NO. 19275/2022**

**Special Police Establishment (Lokayukat) Organization,  
Madhya Pradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Another**

**&**

**WRIT PETITION NO.30016/2022**

**Special Police Establishment (Lokayukat) Organization,  
Madhya Pradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Another**

**&**

**WRIT PETITION NO.19362/2022**

**The Establishment of Lokayukta of Madhya Pradesh, F-Block  
Sultania Road, Old Secretate, SBI Bank Square, Bhopal Madhya  
Pradesh, 462001**

**Vs.**

**State of Madhya Pradesh and Others**

**&**

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**WRIT PETITION NO.30033/2022**

**Special Police Establishment (Lokayukat) Organization,  
MadhyaPradesh (Bhopal) M.P. through Superintendent of Police,  
Special Police Establishment, Organization, Gwalior**

**Vs.**

**State of Madhya Pradesh and Another**

**&**

**WRIT PETITION NO.27398/2023**

**The Special Police Establishment lokayukta Organization of Madhya  
Pradesh, F-Block Sultania Road, Old Secretrate SBI Bank Square,  
Bhopal, Madhya Pradesh, 462001**

**Vs.**

**State of Madhya Pradesh and Others**

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**Appearances:-**

Shri Sankalp Sharma – Advocate for the petitioners-Special Police Establishment Lokayukta.

Shri Prashant Singh Kaurav – Advocate for petitioner-Ramkishor Gupta in W.P. No.10286/2020.

Shri Ankur Mody – Additional Advocate General for the respondent-State.

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Regard being had to similitude of the dispute, all the writ petitions are heard analogously and decided by a common order. For factual clarity, facts of Writ Petition No.17858/2020 are taken into consideration.

**1.** All the writ petitions have been preferred by the petitioner-Special Police Establishment (Lokayukta) Organization under Article

226 of the Constitution of India taking exception to different orders passed by the General Administration Department, Government of Madhya Pradesh, Bhopal in different cases (order dated 29<sup>th</sup> January, 2020 Annexure P-1 in the present writ petition), whereby permission to prosecute the delinquent public servant was declined by the authority. Petitioner/ SPE (Lokayukt) is seeking permission to prosecute the (State) Government Servants because of the nature of allegations levelled against them and incriminating material found against them during investigation.

2. Precisely stated facts of the case are that petitioner/ Special Police Establishment (Lokayukt) Organization is constituted by the State Government under the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 (hereinafter referred as “Adhiniyam 1981”) to check the menace of corruption. Section 13 of the Adhiniyam, 1981 describes about the Staff of Lokayukt and Up-Lokayukt. Section 13(3)(ii) of the Adhiniyam contemplates that any officer or investigation agency of the State or Central Government with the concurrence of that Government, can be utilized by the Lokayukt. As per Section 4 of The Madhya Pradesh Special Police Establishment Act, 1947 (for brevity referred as “Act of 1947”), superintendence and administration of the Special Police Establishment is vested in the Lokayukt appointed under Section (3) (a) of the Adhiniyam, 1981, therefore, Lokayukt on its own and with

the help of Special Police Establishment, investigate the complaint/ allegations levelled against any public servant.

3. In the present case, on a complaint received from the complainant- G.R. Kapoor, Resident of Chinnar Apartment Harishnakarpuram, Gwalior regarding corrupt practice adopted by a Public Servant/ Officer-Public Health Engineering Division-1 of Municipal Corporation Gwalior in respect of making payment to contractors by making forged files, the matter was given to Divisional Committee for inquiry and after getting inquiry report from Municipal Commissioner, Gwalior and Collector, Gwalior, the Special Police Establishment (Lokayukt) registered case at Crime No.283/2013 and matter was handed over to Special Police Establishment (hereinafter referred as "SPE") (Lokayukt) Division Gwalior for investigation.

4. After investigation, the SPE (Lokayukt) found Vivek Singh then Commissioner Municipal Corporation, Gwalior committed offence under Sections 13(1)(D),13(2) & 15 of The Prevention of Corruption Act, 1988 (for short " The PC Act") and Sections 467, 468, 471 and 120-B of IPC and sent the investigation report alongwith the record before the Sanctioning Authority for seeking sanction for prosecution against him under Section 19(1) of The PC Act and under Section 197 of Cr.P.C.

5. Respondent/ Authority refused to grant sanction vide impugned

order dated 29<sup>th</sup> January, 2020 (Annexure P-1) therefore, being aggrieved by such refusal to grant sanction for prosecution against the erring public servant, Petitioner/ SPE (Lokayukt) preferred the instant petition.

6. It is the submission of learned counsel for the petitioner that SPE (Lokayukt) can prefer a writ petition against refusal of sanction for prosecution by the concerned authority. According to learned counsel appearing for the petitioner, by the amendment in the Act, 1947, superintendence and administration of Special Police Establishment is given to Lokayukt and therefore, Lokayukt can investigate the matter. He refers Section 7 of the Act, 1981 and submits that the Lokayukt may proceed to enquire into an allegation made against a public servant in relation to whom the Chief Minister is the competent authority and the Up-Lokayukt may proceed to enquire into an allegation made against any public servant other than that referred to in clause (i) of the Act. When Lokayukt can enquire into an allegation then it certainly can be agitated if the permission to grant sanction is refused by the concerned Department.

7. Learned counsel for the petitioner relied on Section 19 of The PC Act and Act of 1981 and its provisions to bring home the analogy that a person competent to investigate the matter can seek sanction of such government/ authority for taking cognizance of the Court of any of the offence specified in this sub-section and tried to establish that

these provision give wide power to Lokayukt to challenge the refusal to grant sanction.

**8.** Learned counsel also relied upon the judgment of this Court in the case of Special Police Establishment, Bhopal Vs. State of Madhya Pradesh, 2011 CRI.L.J. 2978 whereby the Division Bench of this Court hold that SPE (Lokayukt) has the *locus standi* to challenge the order refusing sanction for prosecution. However, he fairly submits that recent two judgments of the Division Bench of this Court; one is order dated 1<sup>st</sup> July, 2022 passed in Writ Petition No.13776/2022 (The State of Madhya Pradesh Vs. Sandeep Kumar Lohani and Others) and another is order dated 5<sup>th</sup> December, 2022 passed in Writ Petition No.25917/2021 (Special Police Establishment Vs. State of Madhya Pradesh and Others) move in different manner. He refers para 6(a) of the order passed in W.P. No.25917/2021 to submit that the said discussion does not laid down the correct law and there is conflict of judicial opinion between judgments referred above, therefore, matter be referred to the larger/Full Bench.

**9.** Learned counsel for the respondent/State opposes the prayer and submits that in view of the recent judgments of the learned Division Bench of this Court passed in Writ Petition No.13776/2022 and Writ Petition No.25917/2021, this writ petition deserves dismissal.

**10.** Heard the learned counsel for the parties and perused the

record.

**11.** In the present bunch of Writ Petitions, petitioner is the Special Police Establishment (Lokayukt Organization) and is aggrieved by different orders passed by the General Administration Department Government of Madhya Pradesh, Bhopal in different cases whereby the concerned authority refused to grant permission/sanction for prosecution to different public servants. Special Police Establishment was the creation of Statue by M.P. Special Police Establishment Act, 1947. The Preamble of the said Act reads as under:-

*“ Preamble- An Act to make provision for the constitution of a special police force for the investigation of certain offences affecting the public administration, for the superintendence and administration of the said force and jurisdiction of members of the said force in regard to the investigation of the said offences.”*

**12.** By the amendment in Section 4 of the Act, 1947, Superintendence and Administration of Special police Establishment got vested in the Lokayukt appointed under Section (3)(a) of the Madhya Pradesh Lokayukt Evam Up-Lokyukt Adhiniyam, 1981. Thereafter, Special Police Establishment works under the superintendence and administration of the Lokayukt and Up-Lokayukt.

**13.** So far as scope of enquiry by Lokayukt and Up-Lokayukt is

concerned, it is provided in Section 7 of the Act, 1981 which reads as Under:-

***“7. Matters which may be enquired into by Lokayukt or Up-Lokayukt.- Subject to the provisions of this Act, on receiving complaint or other information,-***  
*(i) the Lokayukt may proceed to enquire into an allegation made against a public servant in relation to whom the Chief Minister is the competent authority;*  
*(ii) the Up-Lokayukt may proceed to enquire into an allegation made against any public servant other than that referred to in clause (i).”*

**14.** The manner and procedure in respect of enquiry and provisions relating to complaint are provided in the Adhiniyam, 1981. These are apparently the enquiries which are to be conducted by the Lokayukt and Up-Lokayukt. Section 13 of the Adhiniyam, 1981 talks about Staff of Lokayukt and Up-Lokayukt and Section 13(3)(ii) stipulates that any officer or investigation agency of the State or Central Government can be utilized by the Lokayukt and Up-Lokayukt. Therefore, if Section 13(3)(ii) of the Adhiniyam, 1981 is read in juxtaposition with Section 4 of the Act of 1947 then it appears that enquiry and investigation are two different things and therefore, if investigation is carried out by the Special Police Establishment (Lokayukt) then Special Police Establishment (Lokayukt) can seek permission for prosecution from the concerned Department.

**15.** The Adhiniyam, 1981 was formulated to check the menace of

corruption in public life and to enquire into the allegations levelled against any public servant. Therefore, very purpose of this Adhiniyam, 1981 is defeated if the Lokayukt and Up-Lokayukt being an independent statutory body are not permitted to check the menace of corruption which includes challenging the refusal to grant sanction for prosecution. If the investigation is being carried out by the SPE (Lokayukt) under the superintendence of the Lokayukt and the concerned departments of the State does not grant sanction to prosecute against the erring public servant then SPE (Lokayukt) would be rendered as a toothless tiger, only submitting enquiry report. This was never the legislative intent of the Adhiniyam, 1981.

16. Besides that, paragraphs 12 and 16 of the order passed by the Division Bench in the case of **Special Police Establishment, Bhopal Vs. State of Madhya Pradesh, 2011 CRI.L.J. 2978** if are read in juxtaposition then it reveals that SPE (Lokayukt) has the *locus standi* to challenge the order refusing sanction for prosecution. In para 12 of the said judgment, it appears that the Government Advocate raised the question regarding authority/ jurisdiction of the Court to go into the validity of the order refusing sanction because according to the arguments advanced by government Advocate, absolute power to accord or withhold sanction was conferred with the State Government. Said contention was negated by the earlier Division Bench. Recent two judgments of the Division Bench in Writ

Petition No.13776/2022 (State of Madhya Pradesh Vs. Sandeep Kumar Lohani and Others) and Writ Petition No.25917/2021 (Special Police Establishment Vs. The State of Madhya Pradesh and Others) apparently do not consider the case from this vantage point.

17. When two Division Benches carry different opinion then it is apposite that matter be referred to the Full/ Larger Bench for bringing clarity to the issue/dispute. Therefore, matter is referred to the Larger/Full Bench under Chapter IV of the High Court of Madhya Pradesh Rules, 2008 to answer the reference referred by this Court. Questions for reference are as under:

(1) Whether Special Police Establishment (Lokayukta) has any authority/ jurisdiction/ competence to challenge the order of refusal to grant sanction for prosecution by the General Administration Department (or any other department of the State Government) in respect of an allegation made against any delinquent public servant or not ?

(2) When legislative intent of the Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 was to look into an allegation against public servant and to check breeding of corruption amongst the public servants then whether it gives mandates to the Special Police Establishment (Lokayukt) to challenge refusal to grant sanction for prosecution or

whether the role of Special Police Establishment (Lokayukt) is confined only to enquire into the matter and submit investigation report and not beyond that ?

(3) Whether M.P. Lokayukt Evam Up-Lokayukt, Adhinyam 1981 and Special Police Establishment Act, 1947, if are seen in juxtaposition then it gives an impression that Special Police Establishment (Lokayukt) can investigate the matter and bring the case to its logical end which includes challenge to refusal to grant sanction for prosecution ?

**18.** Office is directed to place the matter before Hon'ble the Chief Justice on administrative side with a request to constitute the Larger/ Full Bench over the reference made above.

**19.** Ordered accordingly.

**20.** Fate of bunch of these writ petitions shall be decided after the reference is answered.

**(ANAND PATHAK)**  
**JUDGE**

**(HIRDESH)**  
**JUDGE**